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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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24341	7590	04/04/2005	EXAMINER	
MORGAN, LEWIS & BOCKIUS, LLP. 2 PALO ALTO SQUARE 3000 EL CAMINO REAL PALO ALTO, CA 94306			LUONG, VINH	
		ART UNIT		PAPER NUMBER
				3682

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/747,911	PARK, DAE DEUG
	Examiner Vinh T Luong	Art Unit 3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-9 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 and 3-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 March 2005 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Vinh T. Luong
Primary Examiner

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

1. The Amendment filed on March 9, 2005 has been entered.
2. The Amendment filed on March 9, 2005 is objected to under 37 CFR 1.121 because in the specification, replacement paragraph or section must be a marked-up version showing the changes. Applicant's replacement paragraphs [0021], [0022], and [0024] fail to show the changes by underlining and/or strikethrough.
3. The drawings were received on March 9, 2005. These drawings are not accepted by Examiner for the objection below.
4. The drawings are objected to because each part of the invention such as the dash panel in claims 8 and 9, and paragraph [0022] of the specification should be designated by a reference numeral or character.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed feature(s) such as the dash panel in claims 8 and 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Figs. 2 and 3 merely show the striking portion 21 but not the dash panel. See paragraph [0022] of the specification.

6. The disclosure is objected to because of the following informalities: each part of the invention such as the dash panel in claims 8 and 9, and paragraph [0022] of the specification should be designated by a reference numeral or character. Appropriate correction is required.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1 and 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaetano et al. (EP 0 827 885 A1).

Regarding claim 1, Gaetano teaches a pedal apparatus for a vehicle, comprising:

a supporting bracket 16 (Fig. 2) fixed to a dash panel 17 of the vehicle;

a pedal arm 10, 20 pivotally connected to the supporting bracket 16, wherein the pedal arm 10, 20 has a first pin 15 pivotally connected to the supporting bracket 16 (Fig. 3) and a second pin 21 at an end of the pedal arm 10, 20 opposite to an end with a foot pad (not shown); and

a lever 30 hooked at one end 31 (Fig. 2) to the pedal arm 10, 20, said lever 30 being configured and dimensioned to be struck by a striking portion 40 under deformation by a front impact of the vehicle causing the pedal arm 10, 20 to rotate in a direction of the front of the vehicle by torque transferred from the lever 30 and wherein said lever 30 has a third pin 33 pivotally connected to the supporting bracket 16 (id., col. 2, lines 46-55), a hook portion 31 hooked to the second pin 21 of the pedal arm 10, 20, and an impact portion 34 opposite to the striking portion 40.

Regarding claim 3, the striking portion 40 is defined as a mounting plate for a steering wheel.

Regarding claim 4, the impact portion 34 rotates about the third pin 33 in the direction of the front of the vehicle such that the hook portion 31 rotates about the third pin 33 in a direction of the rear of the vehicle, and wherein the second pin 21 hooked by the hook portion 31 rotates about the first pin 15 in the direction of the rear of the vehicle such that the end of the pedal arm 10, 20 adhering the foot pad (not shown) rotates about the first pin 15 in a direction of the front of the vehicle.

Regarding claim 5, the pedal apparatus is a brake pedal apparatus (id., col. 1, lines 5-8).

Regarding claim 6, the pedal apparatus is capable of being a clutch pedal apparatus.

Regarding claim 7, Gaetano teaches a pedal apparatus for a vehicle, comprising:

a pedal arm 10, 20 configured to be pivotably mounted to a dash panel 17 with an upper end above the pivot 15 or 11 and a lower, foot operated end below the pivot 15 or 11; wherein the pedal arm 10, 20 has a first pin 15 pivotally connected to a bracket 16 (Fig. 3) and a

second pin 21 at an end of the pedal arm 10, 20 opposite to the lower, foot operated end below the pivot 15 or 11;

a lever 30 pivotably mounted to the dash panel 17, with a first end 31 engaging the upper end 21 of the pedal arm 10, 20 and a second impact end 34 extending opposite the first end 31; and wherein said lever 30 has a third pin 33 pivotally connected to the bracket 16 (id., col. 2, lines 46-55) and a hook portion 31 hooked to the second pin 21 of the pedal arm 10, 20; and

a striking member 40 disposed opposite the impact end 34 of the lever 30 such that deformation of the dash panel 17 in response to a collision causes the striking member 40 to strike the impact end 34 of the lever 30 which pivots such that the first end 31 pulls the pedal arm 10, 20 to a retracted position (Fig. 1).

Regarding claim 8, the pedal arm 10, 20 and lever 30 are pivotably mounted to the bracket 16 that is secured to the dash panel 17. Id., col. 2, line 31 through col. 3, line 47, and claims 1-5.

9. Claim 9 is rejected under 35 U.S.C. 102(a) as being anticipated by Franck et al. (EP 1 247 710 A1).

Franck teaches a pedal apparatus for a vehicle, comprising:

a pedal arm 4 configured to be pivotally mounted at a pivot point 5 (Fig. 8) to a dash panel 20, 2, 3 (Fig. 3) with an upper end 40 above the pivot point 5 and a lower, foot operated end 42 below the pivot point 5, wherein the pedal arm 4 has a first pin 5 at said pivot point 5 pivotally connected to a bracket 20, 2 and a second pin 7, 8 (Fig. 5) disposed on the pedal arm 4 *at a point rigidly linked to the pivot point 5* and at an end 40 of the pedal arm 4 opposite to the lower, foot operated end 42;

a lever 9 pivotably mounted to the dash panel 20, 2, 3, with a first end 90 engaging the upper end 40 of the pedal arm 4 and a second impact end 91 (Fig. 1) extending opposite the first end 90, and wherein said lever 9 has a third pin 92 pivotally connected to the bracket 20, 2 and a hook portion 90 hooked to the second pin 7, 8 of the pedal arm 4; and

a striking member 10 disposed opposite the impact end 91 of the lever 9 such that deformation of the dash panel 20, 2, 3 in response to a collision causes the striking member 10 to strike the impact end 91 of the lever 9 which pivots such that the first end 90 pulls the pedal arm 4 to a retracted position (Fig. 2).

10. Applicant's arguments filed on March 9, 2005 have been fully considered but they are not persuasive.

35 USC 102(a)

The rejection based on Claude is withdrawn in view of Applicant's amendment.

35 USC 102(b)

Applicant argues:

The Examiner has mischaracterized the bracket (20) as an extension of the pedal arm because it is rotatably hinged to the support (16) and is pivotally connected to the pedal arm (10) through a different pin (11) (see page 5 of the Office Action). But the bracket in Gaetano is clearly a separate part from the pedal arm, and it normally does not move unless too much pressure is exerted on the pedal arm that might injure the driver's foot in a frontal collision (col. 3, lines 5-19; Figs. 1-2). In other words, the bracket normally does not rotate when the pedal arm is actuated by the driver's foot. Therefore, the bracket in Gaetano is not a pedal arm or an extension of a pedal arm.

First, as noted in MPEP 2111, during patent examination, claims are given their broadest reasonable interpretation consistent with the specification. It is proper to use the specification to

interpret what the applicant meant by a word or phrase recited in the claim. However, it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) and *IntervetAmerica Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989). Words of the claim are generally given their ordinary and customary meaning, unless it appears from the written description that they were used differently by the applicant. Where an applicant chooses to be his or her own lexicographer and defines terms with special meanings, he or she must set out the special definition explicitly and with "reasonable clarity, deliberateness, and precision" in the disclosure to give one of ordinary skill in the art notice of the change. See *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), *Merck & Co. v. Teva Pharmaceuticals USA Inc.*, 73 USPQ2d 1641 (Fed. Cir. 2005), and MPEP 2111.01. Pursuant to 35 U.S.C. § 112, second paragraph, "[i]t is applicant's burden to precisely define the invention, and not the [examiner's]." *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997). Therefore, it would not be proper for the examiner to give words of the claim a special meaning when no such special meaning has been defined by the applicant in the written description.

In the instant case, Applicant does not provide any special meaning to the term "bracket." The attached *Merriam Webster's Collegiate Dictionary, Tenth Edition*, 1999, defines "bracket" as "an overhanging member that projects from a structure (as a wall) and is usu. designed to support a vertical load or to strengthen an angle." Therefore, Gaetano's support 16 is properly interpreted to be the bracket as seen in the rejection.

In addition, Gaetano's element 20 is properly interpreted to be an extension of the pedal arm because the element 20 is integrally and/or operatively connected to the pedal arm 10. The examiner respectfully submits that applicant apparently used an "*ipsissimis verbis*" test that requires the same terminology in the prior art in order to find anticipation. See footnote 11 in *AKZO N.V. v. International Trade Commission*, 1 USPQ2d 1241, 1245 (CAFC 1986). Gaetano does not need to use applicant's lexicography such as "a pedal arm" to anticipate applicant's claims. It is well settled that anticipation law requires distinction be made between invention described or taught and invention claimed. It does not require that the reference "teach" what subject patent application teaches, it is only necessary that the claim under attack, as construed by the Court, "*read on*" something disclosed in the reference, *i.e.*, all limitations of the claim are found in reference, or are "*fully met*" by it. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983). Even though Gaetano's element 20 is a separate part from the pedal 10, however, Applicant's claims 1 and 7 do not require the pedal arm to be formed as one-piece, *a fortiori*, Gaetano's elements 20 and 10 "*read on*" Applicant's claimed "pedal arm."

Particularly, Applicant admits: "it [Gaetano's element 20] *normally* does not move unless too much pressure is exerted on the pedal arm that might injure the driver's foot in a frontal collision (col. 3, lines 5-19; Figs. 1-2). In other words, the bracket *normally* does not rotate when the pedal arm is actuated by the driver's foot." (Emphasis added). In other words, Applicant admits that in case of abnormal situation, *i.e.*, when there is too much pressure such as in the event of a frontal collision, the element 20 does rotate as explicitly described from col. 2, line 56 through col. 3, line 19. Consequently, Applicant's functional statement in Applicant's claims 1 and 7 is transparently performed by Gaetano's pedal arm 10, 20.

Applicant further contends:

Yet, in contrast, Gaetano does not teach the limitations of claims 1 and 7. For example, Gaetano does not teach a pedal arm having a first pin pivotally connected to the supporting bracket as claims 1 and 7 teach because the first pin in Gaetano is pivotally connecting the bracket to the support with the front body frame. Gaetano also does not teach a second pin being at an end of the pedal arm opposite to an end with a foot pad because its second pin is at one end of the bracket, not the end of the pedal arm opposite to the foot pad. The third pin in Gaetano pivotally connects the lever to the support and not to the bracket as required by claims 1 and 7. Thus, claims 1 and 7 are patentably distinct from Gaetano.

The Examiner respectfully submits that Gaetano does teach the limitations of claims 1 and 7. For example, Gaetano does teach a pedal arm 10, 20 having a first pin 15 pivotally connected to the supporting bracket 16 as claims 1 and 7 teach because the first pin 15 in Gaetano is pivotally connecting the bracket 16 to the support 17 with the front body frame 17. Gaetano also does teach a second pin 21 being at an end 20a of the pedal arm 10, 20 opposite to an end 10 with a foot pad (unnumbered in Fig. 1). The third pin 33 in Gaetano pivotally connects the lever 30 to the support 17 and to the bracket 16 as required by claims 1 and 7. Thus, claims 1 and 7 are patentably anticipated by Gaetano.

For the foregoing reasons, the rejection based on Gaetano is respectfully maintained.

11. Applicant's amendment (new claim 9) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 703-308-3221. The examiner can normally be reached on Tuesday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

March 28, 2005



Vinh T. Luong
Primary Examiner